UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARCIA BURRELL, CARMEN EDWARDS,
JANAY STEPHENS, AND MARIA PEREZ

Plaintiffs,

v.

Case No. 2:16-cv-10568
Hon. George Carem Steeh

MGM GRAND CASINO DETROIT, a Michigan Corporation, MGM RESORTS INTERNATIONAL, PARTNERS DETROIT LLC, DANIEL HILANKA, in his individual capacity, EVE MARSTON, in her individual capacity, UNNAMED MGM DETROIT SURVEILLANCE OPERATOR, in his individual capacity, MICHIGAN GAMING CONTROL BOARD

Defendants.
____/

DEFENDANT MGM RESPORTS INTERNATIONAL'S MOTION TO DISMISS FOR IMPROPER SERVICE OF PROCESS AND LACK OF PERSONAL JURISDICTION

BUTZEL LONG, a professional corporation

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NOW COMES Defendant, MGM Resorts International, through its attorneys, Butzel Long, a professional corporation, and for its Motion to Dismiss for Improper Service of Process and Lack of Personal Jurisdiction, states as follows:

1. Plaintiff has filed a "Certificate of Service/Summons Returned" as to Defendant MGM Resorts International. [Dkt. 8].

2. In its Certificate of Service, Plaintiff claims to have served "MGM Resorts International" but the documentation attached to the Certificate of Service shows that no such service was effectuated. [Dkt 8, Pg ID 52-55].

3. In fact, MGM Resorts International has not been served and thus no Answer is due as indicated in Docket 8.

4. Plaintiffs have also failed to plead any facts regarding personal jurisdiction over MGM Resorts International and, in fact, no such jurisdiction exists.

4. Despite reasonable efforts, including an email and attempted call to Plaintiff's counsel, the movant was unable to conduct a conference.

WHEREFORE, MGM Resorts International must be dismissed for want of service and lack of personal jurisdiction. In the alternative, Plaintiff's Return of Service, Docket 8, should stricken as it falsely claims that MGM International was served and must file an Answer.

Respectfully submitted,

BUTZEL LONG, a professional corporation

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Dated July 26, 2016

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BRIEF IN SUPPORT

BUTZEL LONG, a professional corporation

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STATEMENT OF ISSUES PRESENTED

I. Whether MGM Resorts International should be dismissed under Fed. R. Civ. P. 12(b)(5) after Plaintiffs mistakenly claimed that it had been served when in fact it has not yet been served.

Defendant answers: yes

Plaintiffs answer: unknown

II. Whether this Court has personal jurisdiction over MGM Resorts International where Plaintiffs have failed to plead any facts regarding jurisdiction for this foreign entity.

Defendant answers: no

Plaintiffs answer: unknown

STATEMENT OF CONTROLLING AUTHORITY

Federal Rule of Civil Procedure 12(b)(5) authorizes a district court to dismiss a complaint for insufficiency of service of process. The party on whose behalf service of process was made has the burden of establishing its validity. *Metro. Alloys Corp. v. State Metals Indus., Inc.*, 416 F. Supp. 2d 561, 563 (E.D. Mich. 2006) *citing Shires v. Magnavox Co.*, 74 F.R.D. 373, 377 (E.D.Tenn.1977).

Further, under Fed. R. Civ. P. 12(b)(2), a plaintiff must plead facts establishing personal jurisdiction over the defendants, and the plaintiff has the burden of making at least a *prima facie* showing of personal jurisdiction. *See Gilbert; Gould v. P.T. Krakatau Steel*, 957 F.2d 573, 575 (8th Cir.1992); *Kerry Steel, Inc. v. Paragon Indust., Inc.*, 106 F.3d 147, 149 (6th Cir.1997). "Without personal jurisdiction over an individual ... a court lacks all jurisdiction to adjudicate that party's right, whether or not the court has valid subject matter jurisdiction." *Friedman v. Estate of Presser*, 929 F.2d 1151, 1156 (6th Cir.1991). *Perotti v. Marlberry*, No. 05-60172, 2012 WL 917911, at *1 (E.D. Mich. Jan. 30, 2012), *report and recommendation adopted*, No. 05-60172, 2012 WL 917577 (E.D. Mich. Mar. 19, 2012)

FACTS

Plaintiffs filed a Return of Service of the Summons and Complaint in this matter for MGM Resorts International on July 10, 2016. The docket entry for the Return of Service states:

> CERTIFICATE of Service/Summons Returned Executed. MGM Casino served on 6/13/2016, answer due 7/5/2016; MGM Resorts International served on 6/13/2016, answer due 7/5/2016. (Attachments: # (1) Document Continuation Certificate of Service MGM Resorts, # (2) Exhibit Return receipt) (Coleman, Delicia)

[Dkt. 8].

As part of the Return of Service, Plaintiffs attached a postal domestic return receipt demonstrating service on "MGM et al" and "MGM Grand Resorts" at 601 Abbott Road in East Lansing Michigan. [Dkt. 8-2, Pg ID 52-53]. Apparently, Plaintiffs felt this would be sufficient service for "MGM Grand Detroit Casino"[1] as well as MGM Resorts International. A search of the Corporations Division Business Entity Search reveals there is no "MGM Resorts International" in Michigan. See e.g., www.dleg.state.mi.us/bcs_corp.asp. In fact, MGM Resorts International is a Delaware corporation with its business address in Las Vegas, Nevada.[2] Thus, Plaintiffs are mistaken in claiming that

[1] According to the documents attached to Plaintiff's Return of Service, there is no such entity as "MGM Grand Detroit Casino." [Dkt. 8-2 at Pg ID 55].

[2] See, https://www.sec.gov/edgar/searchedgar/companysearch.html. This information is public record.

MGM Resorts International was served at an address in Lansing, Michigan. In fact, service has not been effectuated on MGM Resorts International and the above docket entry is inaccurate that any Answer is due.

In addition, given that MGM Resorts International is a Delaware entity with its principle place of business in Las Vegas Nevada, Plaintiff must plead some facts indicating how this Court has personal jurisdiction over MGM Resorts International. In their Complaint, Plaintiffs state that "[u]pon information and belief MGM International is a corporation registered [sic] place of business in the State of Nevada." [Dkt 1, ¶ 5]. Plaintiffs then claim they were employed by "MGM Casino Detroit." [Dkt 1 at ¶ 14]. Plaintiffs do not state any specific allegations against MGM Resorts International or plead any facts that establish personal jurisdiction.

ARGUMENT

I. PLAINTIFFS' RETURN OF SERVICE FALSELY CLAIMS THAT MGM RESORTS INTERNATIONAL WAS SERVED.

Federal Rule of Civil Procedure 12(b)(5) authorizes a district court to dismiss a complaint for insufficiency of service of process. The party on whose behalf service of process was made has the burden of establishing its validity. *Metro. Alloys Corp. v. State Metals Indus., Inc.*, 416 F. Supp. 2d 561, 563 (E.D. Mich. 2006) *citing Shires v. Magnavox Co.*, 74 F.R.D. 373, 377 (E.D.Tenn.1977). In deciding a motion to dismiss under Rule 12(b)(5), the court may refer to record evidence in determining the sufficiency of service. *Thompson v. Kerr*, 555 F.Supp. 1090, 1093 (S.D.Ohio 1982). Facts as attested to in uncontroverted affidavits may be considered in ruling on a motion to dismiss under Rule 12(b)(5). *See Shires*, 74 F.R.D. at 376–377 (reasoning that uncontroverted facts in affidavits are deemed admitted for purposes of deciding a motion to dismiss for insufficiency of service of process).

Here, Plaintiffs allege that MGM Resorts International was served at an address in Lansing, Michigan. However, neither the documentation attached to Plaintiffs' Return of Service nor a search of the Michigan Business Entity Search shows any such entity listed in Michigan. In fact, MGM Resorts International has not yet been served. Thus, Plaintiffs' return of service is in error and MGM Resorts International should be dismissed from this case. In the alternative, the Return of Service, Docket 8, should be stricken as to MGM Resorts International as it inaccurately claims that an Answer is due.

II. MGM RESORTS INTERNATIONAL ALSO MUST BE DISMISSED BASED ON LACK OF PERSONAL JURISDICTION.

Under Fed. R. Civ. P. 12(b)(2), a plaintiff must plead facts establishing personal jurisdiction over the defendants, and the plaintiff has the burden of making at least a *prima facie* showing of personal jurisdiction. *See Gilbert; Gould v. P.T. Krakatau Steel,* 957 F.2d 573, 575 (8th Cir.1992); *Kerry Steel, Inc. v. Paragon Indust., Inc.*, 106 F.3d 147, 149 (6th Cir.1997). "Without personal jurisdiction over an individual ... a court lacks all jurisdiction to adjudicate that party's right, whether or not the court has valid subject matter jurisdiction." *Friedman v. Estate of Presser*, 929 F.2d 1151, 1156 (6th Cir.1991). *Perotti v. Marlberry*, No. 05-60172, 2012 WL 917911, at *1 (E.D. Mich. Jan. 30, 2012), *report and recommendation adopted,* No. 05-60172, 2012 WL 917577 (E.D. Mich. Mar. 19, 2012).

Here, Plaintiff has failed to plead a single fact to establish personal jurisdiction. Plaintiff's Complaint mentions that MGM Resorts International is based in Nevada but fails to state how or why it is subject to personal jurisdiction. In fact, Plaintiff's Complaint is bereft of any specific allegations against MGM Resorts International. As such, MGM Resorts International should be dismissed for lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2).

Respectfully submitted,

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Dated July 26, 2016

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2016, I electronically filed the foregoing MOTION TO DISMISS FOR IMPROPER SERVICE OF PROCESS with the Clerk of the Court using the ECF system, which will send notification of such filing to counsel of record.

/s/ Brett J. Miller
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